IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 96

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC., *et al.*,
Respondents.

BRIEF FOR RESPONDENTS

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Jurisdiction

The jurisdiction of this Court is derived from Section 240(a) of the Judicial Code of the United States, as amended by Act of February 13, 1925.

Opinion Below

The opinion of the Supreme Court of Puerto Rico, July 26, 1940 (R. 120-127) is printed in Spanish in 57 D. P. R. 958. Volume 57 of the Reports of the Supreme Court of Puerto Rico in English has not been printed.

The opinion of the Circuit Court of Appeals, March 31, 1941, is reported in 118 F. (2nd) 752.

The opinion of the Supreme Court of Puerto Rico upon which the judgment of forfeiture was entered July 30, 1938, is printed in the transcript of record, pages 285 to 304, of case No. 582 here at the October Term 1939.

The English edition of Puerto Rico Reports in which this opinion will appear has not yet been printed.

The opinion of the Circuit Court of Appeals, September 27, 1939, upon the appeal from the judgment of forfeiture is reported in 106 F. (2nd) 754.

The opinion of this Court reversing the Circuit Court of Appeals, March 25, 1940, is found in 309 U. S. 543.

Statement

The Petitioner, People of Puerto Rico, filed an information in the nature of Quo Warranto in the Supreme Court of Puerto Rico, against Respondent Rubert Hermanos, Inc., a Puerto Rican corporation, in which it alleges that the respondent corporation was violating its articles of incorporation and the Joint Resolution of Congress approved May 1st, 1900 (U. S. C. Tit. 48, Sec. 752), by owning and controlling agricultural land in excess of five hundred acres. It prayed that the Court adjudge that respondent had forfeited its corporate franchise, order its immediate dissolution, prohibit it to do business in Puerto Rico and impose a proper fine with all of the pronouncements which in equity and justice are pertinent in the premises.

Respondent demurred to the information upon the ground that the statutes purporting to confer jurisdiction upon the Supreme Court of Puerto Rico were invalid.

Immediately upon filing the information Petitioner filed notices of *lis pendens* in the Registry of Property in which the real property of respondent corporation was inscribed.

Respondent moved the Court to cancel the notices of *lis pendens* and the motion was denied.

An answer to the Information as amended upon striking certain immaterial allegations was filed by Respondent.

The cause was tried by the Court composed of the Chief Justice and Associate Justices of the Supreme Court of Puerto Rico.

Respondent presented no evidence but rested upon its challenge to the jurisdiction of the Court predicated upon the alleged invalidity of the jurisdictional statutes.

The Supreme Court of Puerto Rico entered judgment (R. 15, 16) in which, after finding that the respondent corporation was engaged in agriculture and was guilty of owning and controlling 12,188 acres of land in violation of law and violation of the Joint Resolution of Congress approved May 1st, 1900, and of its own articles of incorporation, it decreed: "the forfeiture and cancellation of the license of the defendant corporation and of its articles of incorporation is hereby ordered and decreed, as well as the immediate dissolution and winding up of the affairs of said corporation. The defendant corporation is adjudged to pay the costs and disbursements of this proceeding, including the sum of two thousand dollars ($2,000) as attorney's fees. The defendant corporation is sentenced to pay a fine in the sum of $3,000.00".

From this judgment respondent corporation appealed to the Circuit Court of Appeals for the First Circuit. That Court reversed the judgment upon the ground that the statutes conferring jurisdiction on the Supreme Court of Puerto Rico were invalid (106 F. (2nd) 754). This Court granted certiorari, reversed the Circuit Court of Appeals and affirmed the judgment of the Supreme Court of Puerto Rico in *Puerto Rico* v. *Rubert Hermanos, Inc.*, 309 U. S. 543.

On the same day that the Supreme Court of Puerto Rico entered judgment, Petitioner filed motion for the appointment of a receiver (R. 16, 17), alleging:

> "1. This Honorable Court has recently rendered judgment in the above entitled case (1) ordering the dissolution of the respondent corporation and (2) decreeing the forfeiture and cancellation of the license of the respondent corporation.
>
> 2. Such dissolution and disposition of the property of the respondent shall be entrusted to a receiver.

In view of the foregoing and pursuant to the provisions of subdivisions 4 and 5 of Section 182 of the Code of Civil Procedure in force, the People of Puerto Rico prays this Honorable Court to make an order for the appointment of a receiver in accordance with law."

This motion was set for hearing on November 9, 1938 and upon the request of petitioner was "left in abeyance" (R. 17).

On March 27, 1940, a motion duly verified, subscribed by all of the stockholders of the respondent corporation and accompanied by a certified copy of the judgment of the Supreme Court of Puerto Rico, was filed in the office of the Executive Secretary of Puerto Rico, with the request that the dissolution of the corporation in conformity with the judgment be noted (R. 119).

On March 28, 1940, a deposit to pay the fine, attorneys fees and costs imposed by the judgment, was made with the Clerk of the Supreme Court of Puerto Rico (R. 17, 18), and such monies were paid to petitioner by order of the Court (R. 20).

Directors of the respondent corporation acting as statutory liquidators satisfied and extinguished all obligations of the corporation and with the unanimous consent of the stockholders transferred all of its properties to a civil partnership of which all of the stockholders of the corporation on the date of its dissolution were partners.

On March 29, 1940, the Attorney General of Puerto Rico, as attorney for Petitioner, was notified in writing of such transfer and the members of the partnership stated their willingness to sell all of such properties to the People of Puerto Rico (R. 109, 110).

The properties so transferred to the civil partnership were the same properties that were owned and operated by the civil partnership Rubert Hermanos and were transferred by that partnership to the respondent corporation at the time that it was organized.

On May 13, 1940, petitioner requested the Court to set the motion for appointment of a receiver for hearing.

Respondents filed an answer and opposition to the motion (R. 21, 22), in which the directors of Rubert Hermanos, Inc. alleged that the judgment of the Court had been complied with, the corporation dissolved, its obligations extinguihsed, and its property remaining after the payment of its debts distributed among its stockholders. They further alleged that even if the corporation had not been liquidated, the Court was without jurisdiction to appoint a receiver because the *quo warranto* proceeding was no longer pending and that the Quo Warranto Act did not authorize the Court to appoint a receiver in such a proceeding nor the Attorney General or People of Puerto Rico to request the appointment of a receiver in such a proceeding. And finally, respondents contended that assuming jurisdiction and statutory authority the motion did not state facts justifying the appointment of a receiver, that the appointment would deprive respondents of their property without due process of law and amount to judicial legislation violative of the Organic Act prohibition against *ex post facto* legislation.

The motion for appointment of a receiver was stipulated to be submitted upon the motion, the answer and opposition and briefs to be filed simultaneously by the parties.

In the brief filed by petitioner in support of the motion a new and additional ground for the appointment of a receiver was asserted as follows:

> "The principal objective of the motion for the appointment of the receiver now under discussion is the preservation of the status quo (until the proceeding is terminated) with regard to the lands which defendant possesses in excess of 500 acres."
>
> "This matter is governed by Act No. 47 (Special Session) approved on August 7, 1935. This statute which amends the Quo Warranto Act of 1902, provides in the second paragraph of Section 2 that 'The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting

from the date on which final sentence is rendered." (R. 25)

In their reply brief respondent urged upon the Court that this new ground should not be considered, that the grounds and all of the grounds upon which such a motion is based must be set out clearly and specifically in the motion and constituted a jurisdictional prerequisite. (R. 78-85)

Assuming that the ground proposed by petitioner's brief could be considered as incorporated in the motion, respondents contended that under the well settled doctrine theretofore followed and approved by the Supreme Court of Puerto Rico, the motion so amended was insufficient to invoke the jurisdiction of the Court to appoint a receiver. (R. 34-39)

As to this ground respondents further contended that the right to exercise the option to confiscate the land illegally held or have it sold at public auction no longer existed because under a correct construction of Section 2 of Act No. 47, the term fixed for the exercise of the option ended upon entry of the final judgment and that in any event the option provision was invalid as *ex post facto* and violative of the due process and equal protection clauses of the Organic Act.

Finally, respondents maintained that by Section 27 of the Private Corporations Act of Puerto Rico the corporate existence was continued after the judgment of forfeiture for the purpose of prosecuting and defending suits by or against it and of enabling it to settle and close its affairs, to dispose of and convey its property and to divide its capital and that Section 28 of the same Act made the directors of the respondent corporation trustees thereof pending liquidation with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders after paying the debts so far as such moneys and property shall suffice. And it further maintained that such statutory liquidators could only be removed or substituted,

or a receiver appointed upon a showing of misconduct or failure to discharge the trust imposed upon them.

Expressly or inferentially, the Supreme Court of Puerto Rico decided adversely to respondents all objections and grounds of opposition to the appointment of a receiver that they had raised.

It proceeded to appoint a receiver of all of the property and assets of the defunct respondent corporation not for the purpose of liquidating and winding up the affairs of the corporation, but expressly for the purpose of conducting a business and carrying on activities that the liquidators of the corporation could not lawfully conduct or engage in and which would, if so engaged in or so conducted by liquidators of the corporation, have made them liable to penalties of fine and imprisonment. Furthermore, the order appointing the receiver authorized him to conduct such business for an indefinite time with the funds of the corporation and to encumber the properties to obtain such loans of money as he might deem necessary.

From this decision and order respondents appealed to the Circuit Court of Appeals for the First Circuit. In connection with their appeal respondents assigned as error the decision of the Supreme Court of Puerto Rico overruling the jurisdictional objections and grounds above specified.

Assignments 20 and 21 specifically pointed out as error the lack of jurisdiction of the Supreme Court of Puerto Rico to appoint a receiver for the purpose of carrying on the business theretofore conducted by the dissolved corporation and to make the properties liable for the expense of carrying on such business.

Respondents pointed out to the Circuit Court of Appeals in their analysis of the decision and order of the Supreme Court of Puerto Rico appointing a receiver that although the Court declared that it had power to appoint a receiver to liquidate and wind up the affairs of respondent corporation, it did not appoint a receiver for such a purpose.

After quoting from the opinion of the Supreme Court of Puerto Rico holding that the People of Puerto Rico has such an interest as entitles it to request the appointment of a receiver for the protection of the right granted by Section 2, Par. 2 of the Quo Warranto Law (R. 126, 127), at page 13 of appellant's brief they stated:

> "Whatever doubt might exist as to the purpose of the order by reason of statements in the opinion as to the power of the Court to compel execution of its judgment, disappears upon the reading of the order itself.
>
> There is no suggestion of an execution of the provisions of the judgment, no provisions for the liquidation and winding up of the affairs of the defendant corporation.
>
> Instead of the 'immediate dissolution and winding up of the affairs' of the corporation, liquidation and perhaps dissolution is indefinitely postponed. For a judgment of immediate dissolution and winding up of the defendant corporation and the distribution of its property among its creditors and stockholders the order indefinitely postpones both."

And at page 15:

> "It will be noted that although the option to confiscate or have sold at public auction is limited to real or immovable property 'unlawfully held' the order authorizes and requires the receiver to take possession and control of all property which was possessed by Rubert Hermanos, Inc., both real and personal, movable and immovable. The receiver is thus authorized to take possession of, and the defendant corporation, its directors, assignees, and transferees are required to deliver to him, cash on hand, contracts, choses in action, factory, buildings, railroad, lands, and growing crops, cattle, trucks, motorized equipment, implements and utensils that belonged to or were possessed by the defendant corporation at some indefinite time.
>
> The receivership is made an operating receivership and required to carry on a business that the defendant corporation could no longer conduct.

The receiver is further authorized to create liens upon the property so placed in his possession to secure loans in amounts limited only by the discretion of the receiver.

Property that can neither be confiscated nor sold at the option of the People of Puerto Rico is thus employed and subjected to liability without the consent of stockholders or creditors and without any vestige of lawful authority."

The Decisions Below

The Supreme Court of Puerto Rico decided:

(1) That par. 4 of Article 182 of the Code of Civil Procedure confers jurisdiction to appoint a receiver. (R. 122)

(2) That when a corporation is dissolved by a valid judgment declaring the forfeiture of its charter, from that moment it ceases to exist for all purposes, unless there is some statutory provision continuing its existence, and it is without any power to contract or to acquire, possess or transfer properties, or to sue or to be sued, or to exercise any other franchise or powers granted by its articles of incorporation. (R. 123)

(3) That there is no statute in Puerto Rico providing that a corporation which has ceased to exist by virtue of a judicial judgment continues to have legal existence to liquidate its affairs and sell its property without the intervention or permission of the Court. That the provisions of the corporation law of Puerto Rico (Sec. VI, Arts. 27 and 28) are applicable only to a voluntary dissolution agreed by the shareholders of a corporation or by the expiration of the term fixed for its duration. (R. 123, 124)

(4) That in any event neither the extinct corporation nor its liquidators can dispose of its properties and liquidate until the option granted to the People of Puerto Rico by the second paragraph of Section

2 of Law No. 47 of August 7, 1935, to confiscate or have sold at public auction the properties illegally possessed by the extinct corporation, has expired. (R. 124, 125) And that the term for the exercise of such option is six months from and after the date of final judgment—in the instant case November 13, 1940. (R. 122, 123)

(5) All acts of the liquidating trustees for the purpose of liquidating and winding up the affairs of the respondent corporation after the date of the judgment which ended the legal existence of the corporation are legally void. (R. 123)

(6) The People of Puerto Rico is an interested party to obtain the appointment of a receiver for the protection of the right granted by Sec. 2, par. 2 of the Quo Warranto Law. (R. 126) In this case, a petition has been presented by an interested party in the future holding of lands illegally possessed by the defunct corporation. (R. 126, 127)

(7) "Our statute (Art. 182, C. of Civ. Pro.) grants us the discretional power to appoint a receiver when the forfeiture of a corporation is decreed, without the necessity of the filing of any petition by any interested party in the corporate property." (R. 126).

(8) That the option to confiscate or have sold at public auction would be lost and the fundamental object of the law and public policy which motivated the proceedings defeated if the statutory liquidators were permitted to transfer and convey the properties and liquidate the extinct corporation. (R. 123)

The Circuit Court of Appeals held:

(a) That the Supreme Court of Puerto Rico had correctly construed Section 1 of Act No. 47 as meaning that the People of Puerto Rico have six months after the judgment of dissolution becomes final within which to apply for confiscation or sale at public auction. (118 Fed. (2nd) 758)

(b) That the Supreme Court of Puerto Rico erred in its construction of sections 27, 28 and 30 of the Private Corporations Law of Puerto Rico which are clear and unambiguous. That by such statutory provisions the existence of the respondent corporation was continued for the purposes of liquidation and the directors of the corporation made trustees thereof with full power to settle its affairs. (118 Fed. (2nd) 759)

(c) That these statutory trustees, like trustees in general, are amenable to the jurisdiction of a court of equity and may be called into account there for any neglect of duty or abuse of power. But until they are so called into account in an independent action or proceeding by a party in interest no court has any excuse for interference. (118 Fed. (2nd) 759)

(d) That the statutory provision relied on by the Supreme Court of Puerto Rico, namely, par. 4 of Section 182 of the Code of Civil Procedure, does not mean that a receiver must be appointed as a matter of course in case of dissolution, even by forfeiture. It only preserves to the courts jurisdiction to supplant the statutory trustees upon a proper showing by an interested party, agreeably to the usages of courts of equity. (118 Fed. (2nd) 759)

(e) That no such showing of necessity to supplant the statutory trustees was made in the case at bar and that the People of Puerto Rico have no sufficient interest in the premises to justify the court in continuing the operation of the business for an indefinite period when the owners of the corporation, after its franchise has been forfeited, want to wind up the corporate affairs and promptly proceed to do so. (118 Fed. (2nd) 759)

(f) That the interest of the People of Puerto Rico, namely, that of protecting the option, only extends to excess acreage of land and has nothing to do with other assets of the corporation of every kind and description, all of which the receiver is

commanded to take into his possession by the order appealed from. (118 Fed. (2nd) 759)

(g) That the appointment of a receiver to preserve the status quo was not necessary, as the People of Puerto Rico had availed itself of another and adequate remedy by filing notice of *lis pendens* in the Registry of Property shortly after institution of the quo warranto proceeding. (118 F. (2nd) 759, 760)

Statutes Involved

Statutory provisions referred to and examined herein read as follows:

"An Act to Establish a Law of Private Corporations", approved March 9, 1911:

"Section 27.—*Corporate Existence Pending Dissolution.* All corporations, whether they expire through the limitation contained in the articles of incorporation or are annulled by the Legislature, or otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defendant suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital; but not for the purpose of continuing the business for which they were established."

"Section 28.—(As amended by Act of April 13, 1916, page 68.) *Directors as Trustees Pending Dissolution.* Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, so far as such moneys and property shall suffice. They shall have power to meet and act under the by-laws of the corporation, and, under regulations to be made by a majority of the said trustees, to prescribe the terms and conditions of the sale of such property, or may sell all or

any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of the said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequently thereto, the surviving directors or director shall be the trustee or trustees thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this Act relative to the winding up of the affairs of such corporation and to the distribution of its assets."

"Section 29.—*Powers and Liabilities of Trustees in Liquidation.* The directors constituted trustees as aforesaid shall have power to sue for and recover the aforesaid debts and property by the name of the corporation and shall be suable by the same name, or in their own names, or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts to the amount of the money and property of the corporation which shall come to their hands or possession as such trustees."

"Section 30.—*Judicial Appointment of Liquidators.* When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Puerto Rico is situated, on application of any creditor or stockholder, may at any time, either continue the directors as trustee as aforesaid, or appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof, to collect the debts and property due and belonging to the corporation, with power to prosecute and defend in the name of the corporation or otherwise, all suits necessary or appropriate for the purposes aforesaid, or to appoint an agent or agents under them, or to do other acts that might be done by such corporation if in being

that may be necessary for the final settlement of its unfinished business and the powers of such trustees or receivers may be continued so long as the courts shall think necessary for such purpose."

"Section 31.—*Distribution of Assets by Trustees or Liquidators.* The said trustees or liquidators shall pay ratably, so far as its assets shall enable them, all the creditors for the corporation who prove their debts in the manner directed by the court or by the law of civil procedure. If any balance remain after the payment of such debts and necessary expense, the same shall be distributed among the stockholders."

"Code of Civil Procedure," approved March 10, 1904.

"Section 182.—A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. After judgment, to carry the judgment into effect.

3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

4. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

5. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity."

Act No. 47, approved August 7, 1935, amends Sections 2 and 6 of the "Act Establishing Quo Warranto Proceedings", approved March 1, 1902. The Spanish text is the official text of Act No. 47. Errors appearing in the text of the English edition are corrected in copying these sections.

Section 6, as amended by Act No. 47, was again amended by Act No. 183, approved May 14, 1941.

The pertinent parts of Sections 2 and 6 so amended with that part of Section 6 added by Act No. 183 in italics, read as follows:

"Section 1. When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, in the same proceeding, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final judgment is rendered.

In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

"Section 2. Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment entered shall decree the dissolution of the defendant if it be a domestic corporation, the prohibition to continue to do business in the country if it be a foreign corporation, the nullity of all acts and contracts realized by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by the said corporations in the public registries of Puerto Rico; and when the decree of nullity affects real property and The People of Puerto Rico has chosen to confiscate it or orders it sold at public auction, the final judgment shall fix the reasonable price to be paid for said property. For these

purposes, the just value of the property subject to alienation or confiscation shall be fixed in the same manner as it is fixed in condemnation proceedings. *For the purpose of carrying out the provisions of this section, the Supreme Court is hereby empowered to appoint receivers who, in behalf and with the approval of the Supreme Court shall have exclusive charge of the liquidation and sale of the property of the corporation or corporations affected.*

In all cases the receivers shall give preference, in the acquisition of lands to the Land Authority of Puerto Rico, which shall have a legal preferential option for the purchase of said lands for the fair price fixed by final judgment. The receivers thus appointed shall be bound to initiate the sale of lands within a period of not to exceed six (6) months from the date the receivership is established. The Land Authority shall have a preferential right to purchase said lands for the fair value thereof, within a period of not to exceed one year, during which time said lands cannot be sold to any other person or entity. Said period of one year may be extended for one year more, with the approval of the Governor. After this period or periods, the lands shall be sold at public auction and the Land Authority may bid at the auction sale held to dispose of such lands. The Authority shall be entitled to priority or preference in the purchase of such lands at the public auction in those cases where it may bid a price equal to that offered by the highest bidder. The edicts advertising the public sale shall so recite." (Italics supplied.)

POINT I

The construction of sections 27, 28, 29, 30, 31 and 32 of the Law of Private Corporations of Puerto Rico by the Supreme Court of Puerto Rico is clearly and inescapably wrong.

(a) The Common Law rules as to reverter of real property, escheat of personal property, extinguishment of debts

and credits, and abatement of action resulting from the dissolution of corporations were abrogated by the "trust fund doctrine" established and applied by State and Federal courts of equity.

The equitable rules and principles of the trust fund doctrine were embodied in and enlarged by statutes prototypes of the Puerto Rican statutes. A harmonious and universally accepted interpretation of the purpose and effect of such statutes was adopted by State and Federal courts.

Upon enacting these sections of the Private Corporations Law in 1911, Puerto Rico adopted without restriction the equitable principles and rules that they embodied.

(b) The construction of these sections by the Supreme Court of Puerto Rico abolishes the "trust fund doctrine" and the equitable principles informing such statutory provisions and reverts to the evils and mischief of the common law rules that the trust fund doctrine and statutes based thereon were adopted to remedy.

(c) Construction of the statutory provisions here involved by the Supreme Court as only applicable to voluntary dissolutions of corporations and not including dissolutions by forfeiture of the corporate charter violates every applicable rule of statutory construction. It not only ignores the purpose for which the provisions were enacted and its spirit but the plain letter of the law as well. It is clearly wrong under decisions of this Court.

(a)

Under the doctrine of the Common Law upon the expiration or forfeiture of a corporate charter its power to own property ceased, its real property reverted to the original owner, its personal property escheated to the Crown or State, debts to and from the corporation were extinguished.

These common law rules were abolished as a result of the "trust fund doctrine" that the property of a business

corporation instituted for the purpose of gain or private interest upon dissolution of the corporation, after payment of its debts, equitably belongs to its stockholders and that dissolution can not deprive creditors or stockholders of their rights in its property. *Bacon* v. *Robertson*, 18 How. 480; *Church of Jesus Christ of L. D. S.* v. *United States*, 136 U. S. 1, 47.

The doctrine involved the corollary that the rights of stockholders in respect of corporate property are in no wise affected or impaired by a legislative annulment of the corporate powers; nor by a judicial forfeiture of the charter. *Greenwood* v. *Union Freight R. Co.*, 105 U. S. 13; *New York B. & E. R. Co.* v. *Motil*, 81 Conn. 466, 71 Atl. 563. It was held that under this doctrine the stockholders of a corporation become vested, when its existence ceased, with legal title to its property as tenants in common. *Pewabic Mining Co.* v. *Mason*, 145 U. S. 349; *Stearns Coal & Lumber Co.* v. *Van Winkle*, 221 Fed. 590.

The "trust fund doctrine" was adopted and applied by all state and federal courts.

In many if not a majority of the States statutes have been enacted and are in force embodying and extending this equitable doctrine. Such statutes generally designate the directors of a dissolved corporation as its trustees or provide for the appointment of trustees by the courts. Some of such statutes continue the dissolved corporation for the purpose of liquidation and winding up its affairs, either for an indefinite or a specified limited term of years.

Statutes prolonging the existence of dissolved corporations for the purpose of liquidation, constitute a part of the charter of every corporation created by or under statutes in which such a provision is included. *Ferguson* v. *Miners & M. Bank*, 3 Sneed 609. They have been described as the "embodiment of equitable doctrines" and afford legal remedy where before there was none. *Mason* v. *Pewabic Min. Co.*, 66 Fed. 395. Their purpose is manifestly to provide for the administration of corporate property by dissolved corporations themselves during the period granted for settling and winding up the affairs.

General Electric Co. v. *West Ashville Improvement Co.*, 73 Fed. 386. They are intended to enable corporations to dispose of their assets to wind up their affairs without the intervention of a receiver unless the appointment thereof should be necessary to preserve the assets, make disposition thereof and to conserve and protect the interests of the creditors and the stockholders. *H. M. McCarthy Co.* v. *Dubuque District Court*, 201 Iowa 912, 208 N. W. 505. The effect of such statutory provisions is to abrogate the principles of common law as to reverter of real property, escheat of personal property and extinguishment of debts. *Folger* v. *Chase*, 18 Pick 63; *Strout* v. *United Shoe Machinery Co.*, 195 Fed. 313.

The purpose and effect of such statutes making the directors of a dissolved corporation its trustees in liquidation is accurately stated in 13 American Jurisprudence, as follows:

> "In many states statutes have been enacted designating the directors of a dissolved corporation as its trustees or providing for the judicial appointment of trustees for the dissolved corporation. Such statutes do not impair the obligation of the contracts of creditors.
>
> "The preponderance of authority in respect of such statutes is in favor of the doctrine that the general term 'dissolution' is applicable to dissolutions produced by the forfeiture of corporate charters; but in some jurisdictions the position has been taken that only voluntary dissolutions are within the purview of statutes in which this term is used without any qualification.
>
> "Under some statutes receivers are appointed for the dissolved corporations instead of trustees."
>
> "The general effect of statutes designating or providing for the appointment of trustees for dissolved corporations is to constitute the property and rights of the dissolved corporation a trust fund to be administered by the trustees for the purposes specified by the legislature. The doctrine generally accepted with

little dissent is that statutes of the kind under review vest the legal title to the corporate property in the trustees. It is patent, therefore, that such a statute abrogates the common-law rules with respect to the reversion of real property of a dissolved corporation to its grantors or donors, the escheat of the personal property to the sovereign and the extinguishment of the debts owed by or to such corporation."

13 American Jurisprudence—"Corporations," pp. 1203, 1204.

"The purpose of statutes of the kind under discussion is manifestly to provide for the administration of corporate property by dissolved corporations themselves during the period granted for settling and winding up the affairs and to allow the retention of the title to their property by the corporations themselves unless trustees or receivers are appointed in pursuance of a statute providing for such appointment. The effect of these provisions for extension is to abrogate the common-law rules relative to the reversion of the corporate real estate, the escheat of the corporate personal property, and the extinguishment of the debts owing by or to the corporation at the time of its dissolution."

13 American Jurisprudence, p. 1206.

Sections 27, 28, 29, 30 and 31 of the Private Corporation Law of Puerto Rico are statutes of this type.

Section 27 continues the corporate existence of all corporations dissolved for the purpose of prosecuting and defending suits, to settle and close their affairs, to dispose of and convey their property and divide their capital.

Section 28 makes the directors of a dissolved corporation its trustees pending liquidation, with full powers for such purpose.

Section 29 prescribes the powers and the liabilities of such trustees.

Section 30 authorizes Insular District Courts, upon the application of a creditor or stockholder, to either continue

the directors as trustees or appoint one or more persons as liquidators.

Section 31 imposes on the trustees or liquidators the duty of paying ratably the creditors of the corporation so far as the assets are sufficient and to distribute the balance of assets among the stockholders.

Section 32 prevents the abatement of suits by or against the corporation at the time of its dissolution.

These provisions are substantially the same as those of the General Corporation Law of New Jersey (Laws 1896, Chap. 185). Sections 53, 54 and 55, Comp. Stat. 1910. They are also practically the same as Sections 3810, 3812, 3813 and 3815 of the 1919 Virginia Code (Laws 1902-3, Chap. 270, Secs. 30, 31, 33 and 35).

With the enactment of these sections of the Private Corporation Act in 1911, Puerto Rico adopted fully and without restriction the rules and principles of equity embodied therein.

(b)

If the "trust fund doctrine" and the equitable principles declared by statutes of this character are not in Puerto Rico by virtue of the sections of the Law of Private Corporations here considered, they form no part of its law and jurisprudence. There is no other statute or law in Puerto Rico declaring the effect and consequences of the dissolution of corporations, preserving the rights and interest of creditors and stockholders in corporate property and assets after dissolution, or regarding the devolution of such property and assets.

Doubtless, the legislature, in enacting the amendments to the "Act establishing quo warranto proceedings" found in Act No. 47, approved August 7, 1935, intended to revive and put into force the common-law rules affecting the property and assets of dissolved corporations that had long since been abrogated in the United States.

Section 2 of that Act amending Section 6 of the Quo Warranto Act provided:

"Whenever, in the opinion of the court, it is satisfactorily established that the corporation or corporations have performed acts or exercised rights not conferred by law, or in violation of the express provisions thereof, the judgment shall decree the dissolution of the defendant, if it be a domestic corporation, the prohibition to continue to do business in the country if it be a foreign corporation, *the nullity of all acts and contracts realized by the defendant corporation or entity; and in addition, said judgment shall decree the cancellation of every entry or registration made by said corporation in the public registries of Puerto Rico.*" (Italics supplied.)

Once the deeds transferring real property to the corporation are annulled and the entries in the Registry of Property of such transfers are cancelled, the only titles left outstanding are those of the grantors. As the dissolved corporation can not own property and has no succession or heirs, the personal property escheats to the People of Puerto Rico and the contracts evidencing indebtedness to or from the corporation are annulled and the debts are extinguished.

Of course, in the judgment entered in this case the Supreme Court of Puerto Rico did not decree the nullity of the acts and contracts of the respondent corporation nor did it decree the cancellation of the registry entries, but the italicised mandatory provisions of the statute have never been declared to be invalid and the Supreme Court has declined to pass upon them.

At page 12 of the Reply Brief for Petitioner to Respondents' Brief in Opposition, counsel clearly indicate the view and contention that the "trust fund doctrine" is not applicable in Puerto Rico. Whether this results from the absence of statutory provisions or from Act No. 47 they do not state. Nor do they state what doctrine or rule is applicable. They say:

"C. Respondents' assertion that (Brief, p. 16):

"There was and is no claim that the People of Puerto Rico either owned or had a lien on any of the property of the defendant corporation";

and that the property (ibid, p. 16):

> "belonged to the stockholders of the corporation and after the payment of the debts of the corporation such property or its proceeds was distributable among the stockholders",
>
> *is very plainly mistaken,*—or at least is subject to very great qualification. Plainly, the statutory option on the property, given to The People of Puerto Rico by Act No. 47 of 1935, to have the real property of the company either condemned ('confiscated', upon payment of the just price), or sold at public auction, constituted a very distinct and very important 'interest' in the property, in the nature either of ownership or of a lien, which took precedence of the rights, certainly, of the stockholders,—and possibly, to some extent at least, of the creditors,—which it was the duty of a court of equity to protect; * * *"

And this statement is amplified in the footnote:

> "[8] To the extent perhaps of requiring the marshalling of assets, in case the personal property should not prove sufficient to pay the creditors in full."

The order of the Supreme Court of Puerto Rico by which the money and personal property of the dissolved corporation is taken to be expended and employed by the receiver appointed for the purposes of the business which he is charged with conducting, without compensation therefor, would seem to indicate that the Supreme Court of Puerto Rico also is of the opinion that this personal property does not constitute a trust fund for creditors and stockholders.

The decision of the Supreme Court of Puerto Rico, as interpreted by counsel for petitioner, rejects a legal consequence of the "trust fund doctrine" firmly established by American courts and that is that while the legislature may provide for the dissolution of a corporation whether it is indebted or not, it can not impair the obligation of the existing contracts between it and third persons or take

away the vested rights of its creditors. It *can not* constitutionally pass any law which deprives creditors of the right to resort to the property of the corporation for the satisfaction of their claims.

People v. *O'Brien*, 45 Hun 519, rev'd 111 N. Y. 1, 18 N. E. 602; 2 L. R. A. 255;

Lothrop v. *Stedman*, 42 Conn. 584.

(c)

The Supreme Court of Puerto Rico holds:

"The provisions of our corporation law (Section VI, Arts. 27 and 28) are applicable only to a voluntary dissolution agreed upon by the shareholders of a corporation or by the expiration of the term fixed for its duration."

Section 27 reads:

"All corporations, whether they expire through the limitation contained in the articles of incorporation *or are annulled by the Legislature or otherwise* dissolved, shall be continued as bodies corporate etc." (Italics supplied.)

And Section 28 reads:

"Upon the dissolution *in any manner* of a corporation the directors shall be the trustees thereof pending the liquidation * * *." (Italics supplied.)

Annulment of a corporate charter is a legislative forfeiture. It is in no sense a voluntary dissolution agreed upon by the shareholders.

Corporations may be dissolved in several different manners and by different methods.

"A corporation may be wound up and dissolved either voluntarily or involuntarily. It is said by Blackstone (1 Bl. Com. 485) that 'a corporation may be dissolved: (1) By act of Parliament, which is bound-

less in its operations; (2) by the natural death of all its members, in case of an aggregate corporation; (3) by surrender of its franchises into the hands of the King, which is a kind of suicide; (4) by forfeiture of its charter, through negligence or abuse of its franchises; in which case the law judges that the body politic has broken the condition upon which it was incorporated, and thereupon the incorporation is void.' This enumeration of the methods of dissolution has received the approval of the courts. To these methods, however, may be added: (1) By expiration of the charter through lapse of time, as in this country at the present time corporations are in most jurisdictions created for a limited period only; (2) by the happening of a condition subsequent upon which by the terms of the charter the corporate existence is *ipso facto* to terminate."

13 American Jurisprudence, pp. 1157, 1158.

A voluntary dissolution by agreement of stockholders is but one of the several methods or "manners" of dissolution.

The Supreme Court of Puerto Rico, in construing these sections of the Corporation Law as only applicable to voluntary dissolutions, has disregarded and in effect elided the words "or otherwise dissolved" from Section 27 and the words "in any manner" from Section 28.

As the Circuit Court of Appeals points out, these sections are clear and unambiguous.

Counsel for Petitioner attempt to support the holding of the Supreme Court of Puerto Rico by two theories that they propose:

First, that the words "or otherwise dissolved" and "dissolution in any manner" "may very well and reasonably be construed as the insular Supreme Court does construe them in its opinion (R. 123-127), *as meaning to use the words 'dissolved', 'dissolution'*, in Sections 27, 28, 30, 32 and 33 of the same 'Article VI' entitled 'Dissolution', of the Private Corporations Law; *in the same sense in which the word 'dissolved' is used in the immediately pre-*

ceding Section 26, which is the first section of that Article. That is to say that the words *'dissolved'*, *'dissolution'*, wherever used throughout that Article VI of the statute (Secs. 26-32, inclusive), *mean the same thing defined in the first section* (Sec. 26); *viz., voluntary dissolution* in any manner. 'Whenever in the judgment of the board of directors it shall be deemed advisable that a corporation organized under this act shall be dissolved'; *but to mean only cases falling within that category.*" (Petitioner's Brief, p. 15.)

Second: That Section 182 of the Code of Civil Procedure, pars. 4 and 5, must be construed as qualifying and limiting the language of these Sections of the Corporation Law to the extent of excluding from their operation cases where a corporation has been dissolved because it has forfeited its corporate rights. (Petitioner's Brief, pp. 24-25, Petitioner's Reply Brief, pp. 2-5.)

In support of this theory and contention, counsel cite *San Antonio Gas Co.* v. *State*, 22 Tex. Civ. App. 118, 54 S. W. 289, 293, 294; *Gibbs* v. *Morgan*, 9 Idaho 100, and *State* v. *Judicial Circuit*, 15 Mont. 324.

The Civil Code of Puerto Rico establishes certain rules of statutory construction substantially the same as those applied in common law jurisdictions.

Section 14 of the Civil Code provides:

> "When a law is clear and free from all ambiguity the letter of the same shall not be disregarded, under the pretext of fulfilling the spirit thereof."

Section 15 of the Civil Code reads:

> "The words of a law shall generally be understood in their most usual signification, taking into consideration not so much the exact grammatical rules governing the same, as their general and popular use."

And Section 19 of the same Code declares:

> "The most effectual and universal manner of discovering the true meaning of a law, when its expressions

are dubious, is by considering the reason and spirit thereof or the cause or motives which induced its enactment."

Under these rules of construction it was obvious error for the Supreme Court of Puerto Rico to disregard and give no effect to the words "otherwise dissolved" and "in any manner". And this is true under the decisions of this Court.

> "Nothing is better settled than that, in the construction of a law, its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it. Lake County *v.* Rollins, 130 U. S. 662, 670, 671, 32 L. Ed. 1060, 1063, 1064, 9 Sup. Ct. Rep. 651; Bate Refrigerating Co. *v.* Sulzberger, 157 U. S. 1, 33, 39, L. Ed. 601, 610, 15 Sup. Ct. Rep. 508; United States *v.* First Nat. Bank, 234 U. S. 245, 258, 58 L. Ed. 1298, 1303, 34 Sup. Ct. Rep. 846; Caminetti *v.* United States, 242 U. S. 470, 485, 61 L. Ed. 442, 452, L. R. A. 1917F, 502, 37 Sup. Ct. Rep. 192, Ann. Cas. 1917B, 1168." * * *
>
> "* * * It is elementary that all of the words used in a legislative act are to be given force and meaning (Washington Market Co. *v.* Hoffman, 101 U. S. 112, 115, 25 L. Ed. 782, 783); and of course the qualifying words 'other intoxicating' in this act cannot be rejected. It is not to be assumed that Congress had no purpose in inserting them, or that it did so without intending that they should be given due force and effect."
>
> *United States* v. *Standard Brewery*, 251 U. S. 216, 217, 218.

San Antonio Gas Co. v. *State, supra*, does not support the construction of the Supreme Court of Puerto Rico. The Texas Court of Civil Appeals was construing a statute in which the word "dissolution" was not qualified. That,

statute—Vernon's Stat. 1911, Art. 1206 (Rev. Stat. Art. 682 (606),—reads as follows:

> "Upon the dissolution of any corporation, unless a receiver is appointed by some court of competent jurisdiction, the president and directors or managers of the affairs of the corporation at the time of the dissolution, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of such corporation with full power to settle its affairs."

We think that no decision can be found construing statutes similar to those of Puerto Rico, in which the term "dissolution" is qualified by "in any manner", "otherwise dissolved", or words of like import, that holds that such statutes do not include dissolutions by judgment of forfeiture and any other kind of dissolution. In all of such decisions that we have been able to find the statutes were construed to cover dissolutions effected by forfeiture either judicial or legislative.

Grey, Atty. Gen. v. *Newark Plank Road Co.*, 65 N. J. L. 603, 48 Atl. 557;

American Surety Co. v. *Great White Spirit Co.*, 58 N. J. Eq. 526, 43 Atl. 579;

Watts v. *Vanderbilt*, 45 Fed. (2nd) 968;

Browne v. *Hammet*, 133 S. C. 446, 131 S. E. 612;

Mieyr v. *Federal Surety Co.*, 34 Pac. (2nd) 982.

It may be noted that Section 32 of the Corporation Law prevents the abatement of any suit against *any corporation which may become dissolved* before final judgment and requires notice to the trustees or liquidators before judgment can be entered.

Section 182 of the Code of Civil Procedure of Puerto Rico was enacted and came into force in 1904. The Law of Private Corporations of Puerto Rico was enacted in 1911 and was the last legislative expression as to the liquidation of corporations. If there was anything in Section

182 opposed to the provisions of the Corporation Law it was repealed by implication.

The mere reading of paragraph 4 of Section 182 of the Code of Civil Procedure demonstrates that it did not deal with corporate dissolution effected in a manner not covered by Sections 27 to 31 of the Corporation Law.

We are at a loss to understand why counsel cite *Gibbs* v. *Morgan, supra,* and *State* v. *Second Judicial Circuit, supra,* as supporting the construction of Sections 27 and 28 of the Corporation Law by the Supreme Court of Puerto Rico. In neither of these cases is there any construction or in fact the slightest reference to the corporation law of the State of Idaho or of the State of Montana. The statute construed and applied in both cases is identical with paragraph 5 of Section 182, Code of Civil Procedure of Puerto Rico. Both of the cases view on certiorari the action of the lower courts in appointing receivers of corporate properties, *pendente lite,* in suits brought by minority stockholders against corporations and majority stockholders charged with using their control of the corporation for their own benefit and in fraud of plaintiff stockholders.

The decision in the Idaho case (*Gibbs* v. *Morgan*) relies on the Montana case (*State* v. *Second Judicial Circuit*) as authority.

As we have above stated, neither of these cases is remotely in point. It may be well to point out, however, that the decisions of the Supreme Court of Montana interpreting similar provisions of the Corporation Law of that State which in turn are substantially identical with the California Statute, are flatly in conflict with the construction by the Supreme Court of Puerto Rico. In *Ferrell* v. *Evans,* 25 Mont. 444, 65 Pac. 714, the Court states:

> "Section 561 of the Civil Code constitutes the directors of a corporation dissolved for any reason trustees for the creditors and shareholders with full power to wind up its affairs, unless some other person be appointed for that purpose. No exception is made in case of insolvency. The intention of the legislature seems to have been to provide the most inexpensive and expe-

ditious way for the administration of the affairs of a defunct corporation by confiding them to the hands of those who are best acquainted with them, and have a direct personal interest in preserving and appropriating the assets to their legitimate purposes, subject to an accounting or removal by a court of equity at the instance of a shareholder or a creditor whose rights are jeopardized or betrayed. Havemeyer *v.* Superior Court, 84 Cal. 327, 24 Pac. 121, 10 L. R. A. 627, 18 Am. St. Rep. 192."

A rule of statutory construction so frequently stated and applied by this Court is that when a statute or code is adopted from another State or country it will be presumed to have been adopted with the construction placed upon it by the courts of that state or country before its adoption. Such a construction is regarded as of great weight or at least as persuasive.

And where a statute or code provision has been enacted for a clearly defined purpose establishing a new doctrine of law or providing a new remedy and such a statute has been adopted throughout the several states in substantially the same form, this presumption or intent becomes controlling in its construction.

The Legislature of Puerto Rico since the change of sovereignty and establishment of Civil Government under the new regime has adopted many codes and statutes from state codes and statutes. Among the codes so adopted are the Penal Code, Code of Criminal Procedure, Code of Civil Procedure, Political Code and Corporation Law, Banking Law, Quo Warranto Law, Laws establishing extraordinary remedies of the Common Law.

The Supreme Court of Puerto Rico has repeatedly declared that it would and should construe all such laws of American origin in conformity with the construction placed upon them by the courts of the states of origin.

This is particularly true of the Code of Civil Procedure.

Perhaps the last reported case construing the provision of the Code of Civil Procedure is *Lagarette* v. *Treas-*

urt of Puerto Rico, reported in 55 Decisiones de Puerto Rico, p. 22, but not as yet published in the English reports.

The Court says in this case:

> "As Section 79, par. 2, comes from Section 393 of the Code of Civil Procedure of California it is presented that the Puerto Rican Legislature adopted it with the interpretation given it in the State of its origin.
>
> Therefore we should adopt the interpretation given by the Supreme Court of California."

While this rule is not mandatory, it certainly should not be disregarded when laws with a long legislative history showing their origin, purpose and application are adopted into a territory where no similar antecedent legislation existed.

Under the authority of *Philippine Sugar E. D. Co.* v. *Philippines*, 247 U. S. 385, 62 L. Ed. 1177, this decision of the Supreme Court of Puerto Rico should have been reversed, as it was by the Circuit Court of Appeals. This Court, in the case cited, reversed the construction of Section 285 of the Philippine Code of Civil Procedure for the reasons appearing in the opinion, from which we quote:

> "It is well settled that courts of equity will reform a written contract, where, owing to mutual mistake, the language used therein did not fully or accurately express the agreement and intention of the parties. The fact that interpretation or construction of a contract presents a question of law, and that, therefore, the mistake was one of law, is not a bar to granting relief. Snell *v.* Atlantic F. & M. Ins. Co., 98 U. S. 85, 88-91, 25 L. ed. 52, 54, 55; Griswold *v.* Hazard, 141 U. S. 260, 283, 284, 35 L. ed. 678, 688, 689, 11 Sup. Ct. Rep. 972, 999. This rule of equity was adopted in the Philippine Code without restriction; and the relief is afforded, under appropriate pleadings, without resort to an independent suit for reformation of the contract. The language of Sec. 285 is clearly broad enough to include relief for such mistakes of law; and the earlier decisions of the supreme court of the Philippine

Islands, to which that court refers in its opinion, are not inconsistent with this conclusion." * * *

"* * * It is also urged that, since the construction of Section 285 is a matter of purely local concern, we should not disturb the decision of the supreme court of the Philippine Islands. This court is always disposed to accept the construction which the highest court of a territory or possession has placed upon a local statute. Phoenix R. Co. *v.* Landis, 231 U. S. 578, 58 L. ed. 377, 34 Sup. Ct. Rep. 179. But that disposition may not be yielded to where the lower court has clearly erred. Carrington *v.* United States, 208 U. S. 1, 52 L. ed. 367, 28 Sup. Ct. Rep. 203. Here, the construction adopted was rested upon a clearly erroneous assumption as to an established rule of equity. The supreme court erred in refusing to consider the evidence of mutual mistake, and its judgment must be reversed."

Here, as in the *Philippine* case, the construction adopted rested upon a clearly erroneous assumption as to an established rule of equity and as to the purpose for which the statute was adopted.

In *Yu Cong Eng* v. *Trinidad*, 271 U. S. 500, this Court construed a Philippine statute which had been attacked on constitutional grounds in the Philippine Courts. The Supreme Court of the Philippines, in order to save its constitutionality, limited general and broadly inclusive language of the Act to make it operate on what it deemed that the Legislature might lawfully prohibit. It said:

"What the court really does is to change the law from one which by its plain terms forbids the Chinese merchants to keep their account books in any language except English, Spanish or the Filipino dialects, and thus forbids them to keep account books in the Chinese, into a law requiring them to keep certain undefined books in the permitted language."

This Court held that this construction ignoring the plain letter of the law constituted judicial legislation and re-

versed the Supreme Court of the Philippines upon this point. It said:

> "The suggestion has been made in argument that we should accept the construction put upon a statute of the Philippine Islands by their supreme court as we would the construction of a state court in passing upon the Federal constitutionality of a state statute. The analogy is not complete. The Philippines are within the exclusive jurisdiction of the United States government, with complete power of legislation in Congress over them, and when the interpretation of a Philippine statute comes before us for review, we may if there be need therefor re-examine it for ourselves as the court of last resort on such a question. It is very true that with respect to questions turning on questions of local customs, or those properly affected by custom inherited from the centuries of Spanish control, we defer much to the judgment of the Philippine or Porto Rican courts. Cami *v.* Central Victoria, 268 U. S. 469, 69 L. ed. 1046, 45 Sup. Ct. Rep. 570; Diaz *v.* González y Lugo, 261 U. S. 102, 67 L. ed. 550, 43 Sup. Ct. Rep. 286. But on questions of statutory construction, as of the Philippine Code of Procedure adopted by the United States Philippine Commission, this court may exercise an independent judgment." (pp. 522, 523)

In the instant case the construction of the Puerto Rican statute by its Supreme Court produces an unconstitutional result. It deprives creditors and stockholders of vested rights and property.

The statutes here involved are not derived from Spanish law. Local customs and knowledge of local conditions in nowise affect their construction. They are adopted from statutes of different States; statutes enacted for judicially recognized purposes and motives.

Where the jurisdiction of the Circuit Court of Appeals depends upon the construction of a local statute, it may construe it independently.

> *Petition of Zeno*, 14 Fed. (2nd) 418 and cases cited. (Cert. denied 285 U. S. 57.)

POINT II

The construction of paragraphs 4 and 5 of Section 182 of the Code of Civil Procedure by the Supreme Court of Puerto Rico was clearly wrong.

Whether the Supreme Court of Puerto Rico would have appointed a receiver if it had construed Section 28 of the Law of Private Corporations as applicable to dissolutions occasioned by the forfeiture of corporate charters can only be conjectured. Possibly the Court would have felt that some allegations and proof of the necessity of removing statutory trustees and substituting them by a receiver was necessary.

In any event, whether in connection with these sections of the Corporation Law, or separately considered, the Court does construe paragraph 4 of Section 182 of the Code of Civil Procedure as a sufficient ground for the appointment of a receiver and as conferring jurisdiction for that purpose without any principal suit to which such relief is ancillary. In other words, the Court apparently is of the opinion that a suit or action solely for the appointment of a receiver may be maintained under this section. Counsel for Petitioner, obviously somewhat dubious as to the soundness of this conclusion, prefers to rest the jurisdiction of the Court on paragraph 5 of the same Code Section (subdivision B of Point I, Petitioner's Brief, pp. 24 and 25) and to base the occasion and ground for the appointment of a receiver upon the equitable ground of abdication of trust by the statutory liquidators. (Petitioner's Brief, Points II and III, pp. 25-27.)

Both the Court and counsel for Petitioner assume that the appointment is made in a "pending" case, as they doubtless must, inasmuch as the two paragraphs mentioned only provide for the appointment of a receiver in a "pending case". This assumption, that the case was pending, is directly opposed to the definition and rule declared by Sec. 348 of the Code of Civil Procedure, that an action is deemed

to be pending from the time of its commencement until its final determination upon appeal or until the time for appeal has passed.

Statutes similar to or identical with Section 182 of the Puerto Rican Code are found in many of the Western States. With the only exception of Texas, the Courts of these states have held that the paragraphs of the section of their Codes of Civil Procedure identical with or equivalent to paragraphs 4 and 5 of Section 182 of the Code of Puerto Rico, do not do away with the established rule that courts of equity have no jurisdiction to appoint a receiver except as an ancillary remedy in aid of a primary suit.

These statutes are construed as not authorizing an appointment in a case enumerated in the statute as a ground, as original and independent relief, but only as an auxiliary remedy in an action otherwise properly brought. These statutes are carefully examined and the above conclusions and construction stated in *Cook* v. *Leona Mills Lumber Co.*, 106 Ore. 520, 212 Pac. 785. In this case, it is stated that the statute of Oregon relating to the appointment of a receiver for a corporation is almost identical with that of California (Kerr's Cyc. Codes of California, Sec. 564, par. 5), Montana (3 Revised Codes of Montana 1921, Sec. 9301, par. 5), North Dakota (2 N. Dak. Compiled Laws, Sec. 7588, par. 5) and Idaho (2 Idaho Compiled Statutes, Sec. 6817, par. 5).

In addition to the decisions and authorities cited in *Cook* v. *Leona Mills Lumber Co.*, the following are some of the cases in like manner construing this statute:

Stockholders of Jefferson County Agr. Association v. *Jefferson County Agr. Association*, 155 Iowa, 634, 136 N. W. 672;

Havemeyer v. *Superior Court*, 84 Cal. 327, 24 Pac. 121;

Weatherby v. *Capital City Water Co.*, 115 Ala. 156, 171-2, 22 So. 140, 142.

It should perhaps be noted in passing that the Washington statute provides that when a judgment of involuntary

dissolution is rendered against a corporation the Court "shall restrain the corporation, appoint a receiver of its property and effects, taking account and making distribution thereof among the creditors" and that a similar provision exists in Louisiana.

We have noted under the preceding Point that the Texas Corporation Law, in which the term "dissolution" is unqualified, as construed by the Court of Civil Appeals does not make the directors of a corporation dissolved by a judgment of forfeiture trustees for the purpose of winding up the affairs of the dissolved corporation.

In *San Antonio Gas Co.* v. *State*, 54 S. W. 289, the Court said:

> "When a charter is forfeited, the life of the corporation ceases, and no president and board of directors can survive it, and, unless specially authorized by statute, could not by virtue of their offices, take control of the property of the corporation. If article 682 could apply to cases in which there has been a forfeiture of a charter by the State, it can only apply when no receiver has been appointed by some court of competent authority. If it be necessary to justify the power given by statute, it may be well to remember that appellant in this case is a quasi public corporation, and for the protection of public interests it was necessary that a receiver should be appointed."

It should be noted in this and the Texas cases cited in the opinion, that the dissolved corporations were public service companies, that the appointment of a receiver was asked for in the complaint or information in each case as a part of the final judgment and was made by the final judgment, that the appointment was made in a "pending" case and the part of the judgment appointing the receiver provided that the receiver would take possession subject to just claims by anyone having an interest.

The construction of paragraph 4 of Section 182 of the Code of Civil Procedure by the Supreme Court of Puerto Rico is not supported by authority. It is contrary to the

clear implications of the decisions of that Court in *Schluter* v. *Texidor*, 26 P. R. R. 97 and *Balasquide* v. *Rossy*, 18 P. R. R. 33.

The rule that a receivership is merely an ancillary remedy that can not *per se* be the subject of a suit in equity and may only be granted when some proper and final relief is asked for in the bill of complaint has been so repeatedly declared by Federal Courts that citation of decisions is unnecessary.

It is submitted that a statute should be construed as changing this salutary doctrine only when this intention appears from clear and unequivocal language.

POINT III

The Supreme Court of Puerto Rico was

1. Without jurisdiction to make the order appointing a receiver.

2. In any event it was without jurisdiction to appoint a receiver to take possession of all property and assets of the respondent corporation and to continue the business at the expense of creditors and stockholders of the corporation.

1.

It is open to doubt whether the Supreme Court of Puerto Rico is authorized to appoint a receiver in any case. This question was raised but not decided in *Fernández* v. *The People, et al.*, 15 P. R. R. 605. The Supreme Court of Puerto Rico is an appellate court. It has no original jurisdiction of any of the primary suits or actions to which the remedy of a receivership provided in Section 182 of the Code of Civil Procedure is ancillary. Only Insular District Courts possess jurisdiction of such cases. The only existing suit or proceeding in which the Supreme Court of Puerto Rico is authorized to act as a trial court is in quo warranto actions or proceedings.

In the courts of those states to which the Supreme Court of Puerto Rico has looked in the past for guidance and rules of decision relating to common law or American remedies, suits and proceedings as distinguished from Civil Law suits, proceedings and remedies, it is held that unless the statute so provides, a court has no power to appoint a receiver in quo warranto proceedings upon the petition of the People or State.

"* * * A receiver not being a common law officer and his functions having no relation to the title to the exercise of a franchise, which is the sole question raised on quo warranto to oust a corporation of its corporate franchise, no authority exists for the appointment of a receiver on a judgment of ouster in such a proceeding unless it can be found in express statutory provisions, and the state has no such interest as will sustain an application for such appointment either as a punishment of the illegal use of the corporate franchises or to see that the assets are properly distributed, although after such judgment of ouster and an abandonment of the corporate assets by the directors and officers, a receiver may properly be appointed on the application of a stockholder or creditor in the court having jurisdiction under the statute, to preserve and distribute the assets among creditors and stockholders of the corporation. Some statutes provide that when a corporation shall be dissolved in any manner whatever the court may appoint a receiver for it, and under such a statute, the mere fact of dissolution, or dissolution and property to be administered, is sufficient ground for the appointment. It is held, however, that even under such a statute, where there is also a statutory provision for a winding up by the directors as trustees, the court will not discontinue a liquidation by trustees and appoint a receiver except on equitable ground sufficiently alleged and proved."

19 Corpus Juris Secundum, p. 1528;

Fore v. *San Francisco Superior Court*, 108 Cal. 431;

Commonwealth v. *Order of Vesta*, 156 Pa. St. 531; 27 Atl. 14;

In re Fraternal Guardians Assigned Estate, 159 Pa. 603;

State v. *West Wisconsin R. Co.*, 34 Wis. 197;

Jackson Loan & Trust Co. v. *State*, 101 Miss. 440, 56 So. 293;

Weatherby v. *Capital City Water Co.*, 115 Ala. 156; 22 So. 140.

It would seem that the legislature of Puerto Rico recognized that the Supreme Court was without jurisdiction to appoint a receiver in a quo warranto proceeding by amending Section 6 of the Quo Warranto Law by Act No. 183, approved May 14, 1941, providing that "for the purpose of carrying out the provisions of this section, the Supreme Court is hereby empowered to appoint receivers who in behalf and with the approval of the Supreme Court shall have exclusive charge of the liquidation and sale of the property of the corporation or corporations affected."

Counsel for petitioner suggest, however, that there exists here a recognized equitable ground for the appointment of a receiver. The contention is that the directors of the corporation upon the decree of dissolution, either as directors and officers of the corporation or as statutory liquidating trustees, were charged with a trust "to hold the property subject first, to the jurisdiction of the Court in the pending proceeding, and particularly, during the pendency of the undecided motion for a receiver; and second, subject to the statutory option given by Act No. 47" (Petitioner's Brief, pp. 25, 26). This is a ground not set out in the motion or briefs of Petitioner filed in the Supreme Court of Puerto Rico, not assigned as a reason for making the appointment and not raised or suggested by Petitioner in the Circuit Court of Appeals.

We think that under the decisions of this Court, this theory and contention of Petitioner may not be raised now for the first time in this Court. *Helvering* v. *Minnesota Tea Co.*, 296 U. S. 378, 380. *Roure* v. *Government of the Philippine Islands*, 218 U. S. 386, 400. But assuming that

this theory may be considered, it is without foundation or merit.

It has been held by this Court that the property of a dissolved corporation belongs to its stockholders as tenants in common. *Pewabic Mining Co.* v. *Mason*, 145 U. S. 349, 356. The Circuit Court of Appeals for the Sixth Circuit said in *Stearns Coal and Lumber Co.* v. *Van Winkle*, 221 Fed. 590, 595, 596:

> "The Pewabic Case recognized the right of stockholders to agree among themselves upon the disposition and transfer of the assets.
>
> The relations of stockholders in an expired corporation are 'analogous to the relations of partners.' Mason *v.* Pewabic Mining Co., 66 Fed. 391, 395, 13 C. C. A. 532 (C. C. A. 6); Mason *v.* Pewabic Mining Co., 133 U. S. 59, 10 Sup. Ct. 224, 33 L. Ed. 524; Opinion of the Justices, supra, 66 N. H. 639, 33 Atl. 1076. The rule by which partnership real estate is regarded in equity as personalty is merely for the purpose of subjecting it to the payment of debts and the adjustment of balances between partners (Riddle *v.* Whitehill, 135 U. S. 635, 10 Sup. Ct. 924, 34 L. Ed. 282); but where there are no debts or the debts have all been paid, the partners have the right to personally dispose of or divide the lands (Godfrey *v.* White, 43 Mich. 171, 179, 5 N. W. 243; Lovewell *v.* Schoolfield (C. C. A. 6), 217 Fed. 689, 703, 133 C. C. A. 449).
>
> Statutes for winding up the affairs of dissolved corporations are 'embodiments of equitable doctrines, and afford legal remedy where before there was none.' Mason *v.* Pewabic Mining Co., 66 Fed. 395, 13 C. C. A. 532. Administration under such statutes takes the place of administration in equity. Had the officers of the Oil Well Company taken the statutory proceedings for liquidation of the affairs of the corporation, it would, we think, have been entirely competent, after the payment of debts or after ascertainment that there were none, for the stockholders to divided or dispose of the real estate on the basis of legal ownership as tenants in common."

In *Rossi* v. *Caire*, 174 Cal. 74, 81, 82, the Court said:

"* * * The corporation having ceased to exist, it is no longer capable of holding the title or the possession; the property belongs to the persons who were its stockholders at the time it ceased to be a corporation (Havemeyer *v.* Superior Court, 84 Cal. 362 (18 Am. St. Rep. 192, 10 L. R. A. 627, 24 Pac. 121), and the right of possession passes to the directors by force of the statute making them trustees to settle the corporate affairs, since such right must be necessary for that purpose.

The duties of the trustees are measured by their powers and by the principles of law and equity applicable to the conditions. They have in their possession property belonging to others, they are bound to settle the affairs of the former owner, and they have all the power to deal with and dispose of the property that is necessary to accomplish that object. The interests they are to serve are the interests of the stockholders to whom the property belongs, and of the creditors of the defunct corporation whose debts constitute a paramount charge upon that property. The forfeiture declared by the statute takes place instantly upon the failure to pay the license tax within the time allowed. It may s ike the corporation dead while it is a going concern with large operations or contracts in process of completion which, if not prosecuted to the end, may entail great loss to the stockholders. It may occur while debts are owing but not yet due or payable. The property may be in a condition reasonably requiring further and continued work for its preservation or to make it valuable. The obvious purpose of this statute, in view of these circumstances is, as was said in the Havemeyer case above cited, 'to leave the whole matter of liquidation and distribution to the exclusive control of the directors of the corporation in office at the time of dissolution' (p. 365), and to render it unnecessary and improper for a court to intervene in their proceedings, or to supervise the same in any particular, unless they are guilty of 'neglect of duty or abuse of power' (p. 367). In order

to justify the interference of a court, says the supreme court of Alabama, the mere fact of dissolution, or forfeiture of the charter, is not enough; the facts appearing 'must be of a character to show that the trustees are incompetent, or unfaithful, or are mismanaging the property to the injury of the complainant, or are without power and authority to subserve some peculiar interest or right of the party complaining and that he is being injured thereby.' (Weatherby *v.* Capital etc. Co., 115 Ala. 172 (22 South. 142).) This language was used with reference to an application for the appointment of a receiver to take charge of and administer the corporate assets, as also was the language in the Havemeyer case, but the same principles apply to any application for the intervention of the judicial power to supersede, supervise, or control the powers conferred by the statute upon the trustees.

It was not a necessary part of the statutory duty of the trustees to find a buyer for the land, or to sell the same, otherwise than in order to settle the corporate affairs. If they had money to pay all debts and expenses and all other corporate affairs were disposed of, it would be no abuse of their discretion if they merely delivered the possession of the land to the stockholders as tenants in common according to their interests, leaving them to do with it what they pleased. The fact that they did not look for a buyer is not, of itself, a breach of duty. It must also appear, in order to justify judicial interference to order a sale, that the interests of the parties and the settlement of the corporate affairs required a sale. This does not appear."

The directors of the dissolved respondent corporation would have been guilty of gross negligence and inexcusable failure to comply with the plain duty imposed upon them by law as statutory trustees, if they had not taken immediate steps to protect the interest of creditors and stockholders and to prevent the loss or diminution of the properties and assets of the corporation.

On the date that this Court reversed the Circuit Court of Appeals and affirmed the judgment of the Supreme Court of Puerto Rico the grinding season was at its peak; the sugar factory was in full operation. To stop the operation of the factory for a single day would have meant a loss of thousands of dollars. If the factory ceased to grind the ripe cane of the many independent colono growers and the cane of the corporation the enormous investment in such sugar cane plantations would have been lost. The Directors of the corporation could not know that Petitioner would ask that the "immediate" winding up of its affairs should be indefinitely delayed or that it would contend that Section 2 of the Quo Warranto Law should be construed to extend the option period for six months *after* the final judgment. Counsel for Petitioner had stated in this Court that what had been asked in the prayer of the information and decreed by the Court was the normal liquidation of the corporation. He said:

> "So what would normally follow that in effect would be a requirement of dissolution by the stockholders in the manner pointed out by the corporation law, and, if necessary, the appointment of a receiver and the winding up of the business of the corporation, as any business is wound up upon the death of the corporation, for any purpose at all or for any reason."

There was no attempt to evade any consequences that the law might validly impose. The notice of *lis pendens* adequately protected the option if it should be exercised and even without a *lis pendens*, the lands of the dissolved corporation illegally acquired and controlled would as readily be subjected to the consequences of the exercise of the option as it would in the possession of the corporation itself.

The real theory of Petitioner is that it was or is in some way illegal for these lands to pass to a partnership; that the stockholders of the corporation are for some unknown reason prevented from doing what it was open to any other persons, citizens or aliens to do, namely, to own and pos-

sess as partners more than five hundred acres of land. This pretended privation of the stockholders of their constitutional rights; this partial disenfranchisement finds no legal basis or support. The only law in force in Puerto Rico limiting ownership of land applied to corporations and corporations only. It had never been contended by anyone that a partnership could not own and control over five hundred acres of land. It was not until the passage of the Land Authority Act, approved April 12, 1941 (Act No. 26) that any limitation on partnership or community ownership of land was established by law in Puerto Rico.

The statutory directors here adopted a method of liquidation followed and approved in the cases above cited and in other cases. *Crocker* v. *Commissioner of Internal Revenue*, 84 Fed. (2nd) 64.

2.

What Petitioner asked for in the motion for appointment of a receiver was a receiver to liquidate and wind up the affairs of the dissolved corporation. What Petitioner got was an order postponing liquidation indefinitely and creating an operating receivership—a receivership to carry on the business in which the corporation had been engaged. For this end the receiver was authorized and directed to take not only the land unlawfully owned and controlled by the corporation, but all other land, all real property, all personal property and assets of every nature. The receiver was empowered to use the funds of the corporation as he saw fit to carry on this business and to create preferential liens upon such properties to secure moneys that he might borrow.

After dissolution of a corporation a receiver can only be appointed for the purpose of liquidating and winding up the affairs of the corporation. Such a receiver has no power to continue the business. *14a C. J.* 1185, and cases cited.

In the instant case the Supreme Court of Puerto Rico bases the appointment of a receiver upon the supposed

necessity of preserving the *status quo* until the option to confiscate unlawfully held land or have it sold at public auction has expired and if it is exercised until the fair value of the land has been judicially determined and it has been transferred either to the People of Puerto Rico or to the successful bidders at auction sales. The interest of the Petitioner that entitles it to request the appointment of a receiver is declared to be the option that it may or may not exercise. It is doubtless the rule that prior to dissolution a receiver to conduct the business as a going concern will not generally be appointed in the case of a strictly private corporation. And there is respectable authority holding that after dissolution a receiver can not be appointed to carry on the business of the corporation. *Standlie* v. *Hendrie & Bolthoff Mfg. Co.*, 27 Colo. 331, 61 Pac. 600; *In re Brown & Jenkins Co.*, 106 La. 486, 31 So. 67; *Cady* v. *Centerville Knit Goods Mfg. Co.*, 48 Mich., 190, 11 N. W. 839.

In any case it is not the province of a court of equity to take possession of the property and conduct the business of corporations or individuals, except where the exercise of such extraordinary jurisdiction is necessary to save or protect some clear right and which can not otherwise be protected.

Overton v. *Memphis & L. R. Co.*, 10 Fed. 866.

The appointment of a receiver to conduct the business of the dissolved corporation in the instant case was made without jurisdiction:

First, because property not involved in the litigation, property in which the Petitioner has no interest is turned over to the receiver.

> "To authorize the appointment of a receiver, the petitioner must show that he has some lien upon or property right in the property or that it constitutes a special fund out of which he is entitled to the satisfaction of his demand, and an application for such appointment can only be made by those who have an acknowledged

interest or at least a probable right or interest in or to the property, fund or assets over which a receiver is sought."

* * * * *

"A court can not appoint a receiver to take charge of property which is not involved in the litigation or to take charge of a debtor's property, including that which is not as well as that which is specially bound for the payment of the claim in suit."

In re Richardson's Estate, 294 Fed. 349, 357;

Smith v. *McCullough*, 104 U. S. 25.

There was no showing or suggestion that possession of the factory, railroad, cars and other personal property was necessary for the preservation of the lands unlawfully possessed by the corporation.

If the appointment of a receiver was otherwise authorized it should have been limited to the land to which the option attached.

Second, the Supreme Court of Puerto Rico has no jurisdiction to authorize a receiver to create a preferential lien upon the property of a private corporation for the purpose of carrying on the business without the consent of creditors and stockholders.

Sobrinos de Ezquiaga v. *Rossy*, 21 P. R. R. 369.

Third, the order authorizing the receiver to take, use, consume and exhaust moneys, other personal property and all other property and assets of the respondent corporation in addition to the land on which the Petitioner has an option and which constitutes a trust fund for creditors and stockholders, deprives such stockholders of property without due process of law and of just compensation, in violation of the Organic Act of Puerto Rico and the Constitution of the United States.

Fourth, the order is without or in excess of jurisdiction because it authorizes the receiver to carry on business activities not authorized by the corporate charter of the respond-

ent corporation and declared unlawful by the judgment of forfeiture and dissolution. It confers a franchise power that the legislature is prohibited from conferring.

Safford v. *People*, 85 Ill. 558;

In re Detroit Properties Corporation, 254 Mich. 523, 236 N. W. 850, 852;

Lewis v. *Germantown etc. R. Co.*, 16 Phila. 608;

Gordon v. *Business Men's Racing Association*, 33 So. 768;

American Biscuit and Mfg. Co. v. *Klotz*, 44 Fed. 721.

Fifth, the order appointing a receiver upon the only ground that it was necessary to protect Petitioner's option, affecting lands unlawfully possessed by defendant corporation, was unauthorized because Petitioner's option was already adequately protected by *lis pendens* and Petitioner could also have obtained an injunction as it had in other cases.

"An adequate remedy by *lis pendens* precludes the appointment of a receiver, as does such a remedy by contempt proceedings, by accounting, by stay of proceedings, or by attachment or execution or by injunction."

16 Fletcher Cyclopedia of Corporations (Permanent Ed.), p. 202.

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

HENRI BROWN,
Attorney for Respondent.

JAIME SIFRE, JR.,
Of Counsel.

January 1942.

SUPREME COURT OF THE UNITED STATES.

No. 96.—October Term, 1941.

The People of Puerto Rico, Petitioner, vs. Rubert Hermanos, Inc., et al. | On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[March 16, 1942.]

Mr. Justice Byrnes delivered the opinion of the Court.

By Joint Resolution of May 1, 1900, the Congress provided that "every corporation hereafter authorized to engage in agriculture [in Puerto Rico] shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land."[1] This limitation was carried over into the present Organic Act of Puerto Rico enacted on March 2, 1917.[2] In 1935 the Legislative Assembly of Puerto Rico enacted two laws to provide the means of enforcing the Congressional prohibition. Act No. 33 conferred upon the Supreme Court of Puerto Rico exclusive original jurisdiction over quo warranto proceedings instituted for violations of the 500 acre law.[3] Act No. 47 authorized the Attorney General of Puerto Rico or any district attorney to bring such quo warranto proceedings in the Supreme Court of Puerto Rico against any corporation violating the Organic Act, and provided further that when any corporation is "unlawfully holding . . . real estate in Puerto Rico, the People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered."[4]

This is a quo warranto proceeding brought in 1937 against respondent corporation by the Attorney General of Puerto Rico under these statutes. The complaint alleged that respondent corporation

1 § 3, 31 Stat. 715.

2 § 39, 39 Stat. 951, 964, U. S. C., Title 48, § 752.

3 Act of July 22, 1935, Laws of Puerto Rico, Special Session, 1935, p. 418.

4 Act of August 7, 1935, Laws of Puerto Rico, Special Session, 1935, pp. 530-532.

was organized in 1927 under the laws of Puerto Rico for the purpose of acquiring and working sugar cane farms and plantations, that its articles of incorporation restricted it to the acquisition of 500 acres, that it nevertheless had acquired, and that it owned and was working at the time of the filing of the complaint, some 12,188 acres of land. The answer conceded that the 500 acre restriction was contained in the articles and that the respondent had nevertheless acquired the 12,188 acres, but interposed several defenses. On July 30, 1938 the Supreme Court of Puerto Rico entered judgment for the petitioner. It ordered "the forfeiture and cancellation" of the license and articles of incorporation of respondent, "the immediate dissolution and winding up of the affairs" of the corporation, and the payment of a $3000 fine and costs. On the same day, petitioner moved that a receiver be appointed to handle the dissolution and disposition of the respondent's property, pursuant to subsections 4 and 5 of § 182 of the Puerto Rico Code of Civil Procedure.[5]

The motion for the appointment of a receiver was held in abeyance pending an appeal to the Circuit Court of Appeals for the First Circuit. That Court reversed the judgment of the Supreme Court of Puerto Rico on the ground that Acts Nos. 33 and 47 exceeded the authority of the Legislative Assembly under the Organic Act. 106 F. 2d 754. We granted certiorari, and on March 25, 1940 reversed the judgment of the Circuit Court of Appeals and reinstated that of the Supreme Court of the Island. 309 U. S. 543.

The mandate of this Court reached the clerk of the Supreme Court of Puerto Rico on May 13. On the same day the Attorney

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5 "Section 182.—(564 Cal.) A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the judge thereof:

"1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

"2. After judgment, to carry the judgment into effect.

"3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

"4. *In the case when a corporation has been dissolved*, or is insolent, or in imminent danger of insolvency, *or has forfeited its corporate rights.*

"5. *In all other cases where receivers have heretofore been appointed by the usages of courts of equity.*" (1933 ed., italics added.)

General entered a request for a hearing on petitioner's pending motion for the appointment of a receiver. The respondent then filed its answer and briefs were submitted by both parties. In its answer and brief respondent raised numerous objections to the appointment of a receiver. Chief among these objections were: (a) that on March 28, 1940, respondent corporation had been dissolved by vote of its stockholders and its property conveyed to a partnership consisting of all the stockholders, so that nothing remained to be done; and (b) that the statutes applicable to this case are certain sections of the Private Corporations Law[6] rather

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[6] "Section 27.—*Corporate existence pending dissolution.* All corporations, whether they expire through the limitation contained in articles of incorporation or are annulled by the Legislature, or otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital; but not for the purpose of continuing the business for which they were established.

"Sec. 28 (as amended by Act No. 24 of 1916, p. 68).—*Directors as trustees pending dissolution.* Upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation; with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, so far as such moneys and property shall suffice. They shall have power to meet and to act under the bylaws of the corporation, and, under regulations to be made by a majority of the said trustees, to prescribe the terms and conditions of the sale of such property, or may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of the said property. In case of a vacancy or vacancies in the board of directors of such corporation existing at the time of dissolution or occurring subsequently thereto, the surviving directors or director shall be the trustees or trustee thereof, as the case may be, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying debts, as far as such moneys and property shall enable them, and to do and perform all such other acts as shall be necessary to carry out the provisions of this Act relative to the winding up of the affairs of such corporation and to the distribution of its assets.

"Sec. 29.—*Powers and liabilities of Trustees in Liquidation.* The directors constituted trustees as aforesaid shall have power to sue for and recover the aforesaid debts and property by the name of the corporation and shall be suable by the same name, or in their own names or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts to the amount of the money and property of the corporation which shall come to their hands or possession as such trustees.

"Sec. 30.—*Judicial appointment of liquidators.* When any corporation shall be dissolved in any manner whatever, the district court having jurisdiction of the place where its principal office in the Island of Porto Rico is situated, on application of any creditor or stockholder, may at any time either continue the directors as trustees as aforesaid, or appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof, to collect the debts and property due and belonging to the corporation, with power to prosecute and defend in the name of the corporation, or otherwise, all suits necessary or appropriate for the purposes aforesaid, or to appoint an agent or agents under them, or to do other acts that might be done

than § 182 of the Code of Civil Procedure,[7] that under the terms of the former "the directors shall be the trustees . . . . pending the liquidation" of any dissolved corporation, and that the court was consequently without jurisdiction to appoint a receiver under § 182. The insular court resolved all the issues in petitioner's favor, appointed a receiver of all the property of the respondent, and directed the receiver to handle the property as a going concern until the People of Puerto Rico should exercise the option granted to them by § 2 of Act No. 47 of August 7, 1935 either to confiscate the real estate unlawfully held by respondent or to have it sold at public auction.[8]

From this order respondent took a second appeal to the Circuit Court of Appeals, making the two contentions which have been noted as well as many others which require no discussion here. The Circuit Court of Appeals disposed of several of these contentions unfavorably to the respondent. However, it reversed the judgment of the Supreme Court of Puerto Rico on the ground that the order appointing the receiver was "improvidently issued". In the opinion of the Circuit Court, §§ 27, 28 and 30 of the Private Corporation Law are unquestionably applicable to the dissolution of a corporation by court order as a result of a violation of its charter and the laws, although the insular court had declared them "applicable only to a voluntary dissolution agreed upon by the shareholders of a corporation or by expiration of the term fixed for its duration." With respect to § 182 of the Code of Civil Procedure, upon which the lower court relied, the Circuit Court of Appeals determined that it permitted the appointment of a receiver only "upon proper showing by an interested party, agreeably to the usages of courts of equity." It concluded that the option granted by Act No. 47 of 1935 did not afford the People of Puerto Rico an interest sufficient for this purpose. It observed

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by such corporation if in being that may be necessary for the final settlement of its unfinished business, and the powers of such trustee or receivers may be continued so long as the courts shall think necessary for such purpose." (Appendix to Code of Commerce of Puerto Rico (1932 ed.) 327, at 355.)

[7] See note 5, *supra*.

[8] Section 2 provides, in part:

"When any corporation by itself or through any other subsidiary or affiliated entity or agent is unlawfully holding, under any title, real estate in Puerto Rico, The People of Puerto Rico may, at its option, through the same proceedings, institute in its behalf the confiscation of such property, or the alienation thereof at public auction, within a term of not more than six months counting from the date on which final sentence is rendered.

"In every case, alienation or confiscation shall be through the corresponding indemnity as established in the law of eminent domain."

that the option relates only to the excess acreage, whereas the order had sought to place the receiver in charge of all the property of the respondent, both real and personal. If the People of Puerto should elect to have the land sold at public auction,[9] the Circuit Court asserted, a master can be appointed for that purpose, and in the meantime a notice of lis pendens which was filed with the Registry of Property will prove adequate to protect the People's interest.

The Circuit Court's opinion leaves it uncertain whether it meant to hold that the insular court wholly lacked power to appoint a receiver for a judicially dissolved corporation or merely that it abused its discretion in this case. In any event, the questions for our determination seem to be these: (1) does it lie within the power of the Supreme Court of Puerto Rico to appoint a receiver for the assets of a corporation whose dissolution has been judicially ordered because it has violated its articles of incorporation and the laws of Puerto Rico and the United States; (2) did that court abuse its discretion in appointing a receiver under the circumstances of this case; and (3) did the scope of the order exceed the court's authority?

First: Whether or not it is within the power of the Supreme Court of Puerto Rico to place a receiver in control of the property of a corporation which has been dissolved for violation of law is a question whose answer must be found in the statutes of the Island. As we have said, § 182 of the Code of Civil Procedure provides: "A receiver may be appointed by the court in which an action is pending or has passed to judgment; or by the judge thereof: . . . . (4) In the case when a corporation has been dissolved, or is insolvent, or in immediate danger of insolvency, or has forfeited its corporate rights. (5) In all other cases where receivers have heretofore been appointed by the usages of courts of

[9] According to the Circuit Court's opinion, on August 28, 1940, after the order appointing the receiver had been entered, the Attorney General filed with the insular court the following statement: "Therfore, The People of Puerto Rico elects to have all the lands in the possession of the respondent sold at public auction, and prays this Court to order the sale at public auction of the said real property by the receiver already appointed by this Court, after the same is assessed in conformity with the provisions of the Condemnation Proceedings Act now in force." In the Circuit Court, the respondent argued that the option provided by Act No. 47 could not be exercised in this manner but only by an Act of the Legislative Assembly. We share the Circuit Court's view that this and other problems relating to the actual exercise of the option must first be passed upon by the Puerto Rican Supreme Court.

equity." It seems hardly debatable that if nothing more were shown, these provisions would strongly support the assertion of power by the insular court to appoint a receiver for respondent's property. But respondent urges that the provisions of §§ 27, 28, 29 and 30 of the Private Corporations Law compel the opposite conclusion. Section 27 provides that "all corporations, whether they expire through the limitation contained in articles of incorporation or are annulled by the Legislature, or otherwise dissolved, shall be continued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital; but not for the purpose of continuing the business for which they were established." Section 28 declares that "upon the dissolution in any manner of a corporation, the directors shall be the trustees thereof pending the liquidation." And Section 30 authorizes the appropriate district court of Puerto Rico, "on application of any creditor or stockholder, . . . at any time either [to] continue the directors as trustees as aforesaid, or [to] appoint one or more persons to be liquidators of such corporation to take charge of the assets and effects thereof . . ." Again, if nothing more than these sections were before us, we think it clear enough that upon the dissolution of a corporation "in any manner," the directors would remain in charge of the assets as trustees until some "creditor or stockholder" moved a district court—not the Supreme Court of the Island—to remove them.

A frank recognition that the statutes appear on their face to conflict and to overlap permits us to avoid the lengthy and technical arguments which have been advanced by both parties in this Court and in the courts below. The Supreme Court of Puerto Rico resolved this conflict in favor of its power to appoint a receiver by holding that the pertinent sections of the Private Corporations Law do not apply to judicially ordered dissolutions but that § 182 of the Code of Civil Procedure does apply. In recent years we have had occasion to announce that the decisions of the courts of Puerto Rico with respect to the interpretation of the Island's statutes and to matters of local law are to be accorded the greatest weight. *Sancho Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505; *Sancho Bonet* v. *Texas Company*, 308 U. S. 463. We cannot say that an interpretation placed by the Supreme Court of Puerto Rico upon statutes whose meaning is so open to doubt

is plainly incorrect. Accordingly, though the interpretation suggested by the Circuit Court of Appeals may be equally plausible, it erred in reversing the judgment of the insular court.

Second: Assuming that under § 182 the insular Supreme Court has the power to appoint a receiver for a judicially dissolved corporation, the question remains whether it has abused its discretion in appointing a receiver in this case. The Circuit Court of Appeals, after indicating its belief that the power to appoint a receiver is a drastic one and that it should be sparingly employed, concluded that its use was not warranted by the circumstances of this case. Its reasoning was that the sole interest of the petitioner was its option either to confiscate the excess acreage or to have it sold at public auction. "The People do not need a receiver to protect the option. If and when the time comes for the court to decree a sale of the land at public auction a master can be appointed to carry through the sale. The land will still be there. Meanwhile, the interest of the People is protected by a lis pendens notice which was entered in the Registry of Property shortly after the institution of the quo warranto proceedings, which notice the corporation unsuccessfully sought to have cancelled." 118 F. 2d 752, at 759-760.

It may be true that the procedure suggested by the Circuit Court would have been adequate to the needs of the case. It may even be true that an injunction restraining the directors of respondent from disposing of the property pending the People's choice would have been sufficient. But the same considerations that compel restraint on the part of appellate courts where the question is one of power, apply with double force where the question merely concerns the propriety of its exercise. The Supreme Court of Puerto Rico was in the best position to determine what the situation demanded. The attempted transfer of the corporate assets on March 28, 1940 may have been a bona fide effort to comply with the earlier decree of dissolution, as respondent insists. But the fact that the transfer was made to a partnership whose members had been the stockholders of the dissolved corporation might suggest a disposition on the part of the directors to obstruct the effective exercise of the option afforded the People by Act No. 47. Certainly it would not have been unreasonable for the insular court to suspect that this was so. No doubt the lis pendens notice would prevent the directors from conveying an interest in any of the property which would be superior to that

of a purchaser at a subsequent public auction conducted pursuant to Act No. 47. But the sale and resale of the property, or its encumbrance, could only result in confusion, misunderstanding and needless litigation. It was clearly within the discretion of the Supreme Court of the Island to avert these difficulties.

Third: Respondent insists and the Circuit Court held, finally, that the order was too broad to be sustained. It is argued that it was not confined to the land which was actually in excess of the 500 acre maximum but included all the properties of the respondent, and that it authorized the continued operation of the business by the receiver for an indefinite period. To treat the latter objection first, an examination of the order appointing the receiver reveals that paragraph 7 specifically contemplates the exercise of its option by the People of Puerto Rico. A fair reading of the order requires us to conclude that the period of the receivership was definite enough, since it was clearly regarded as a preliminary to the exercise of the option. The receiver was expressly directed to surrender the properties whenever the People had indicated its choice. As to the provision of the order consigning the whole of respondent's properties to the receiver, it is enough to say that everyone concedes that the properties constitute a working unit in growing, cutting and grinding sugar. To separate the land from the machinery and other personalty pending the People's election between alternative procedures would have been inexcusable economic waste. It was altogether proper for the Supreme Court to recognize these realities and to permit the receiver to preserve the enterprise as a going concern pending a final settlement. Nothing in § 182, upon which it relied for authority to appoint the receiver, requires that it limit the receivership in the manner suggested by respondent.

The order of the Supreme Court of Puerto Rico should be sustained in full.

Reversed.

The CHIEF JUSTICE and Mr. Justice ROBERTS are of the opinion that the court below correctly held, for reasons stated in detail in Judge Magruder's opinion, 118 F. 2d 752, that the appointment of a receiver by the Insular court in the circumstances of this case was an abuse of discretion and that it was the duty of the Circuit Court of Appeals in the exercise of its appellate authority to set the appointment aside.